

BEFORE THE PERSONNEL APPEALS BOARD

STATE OF WASHINGTON

DAVE DUELL,

Appellant,

v.

DEPARTMENT OF CORRECTIONS,

Respondent.

) Case No. RULE-98-0041

)  
) FINDINGS OF FACT, CONCLUSIONS OF  
) LAW AND ORDER OF THE BOARD

I. INTRODUCTION

1.1 **Hearing.** This appeal came on for hearing before the Personnel Appeals Board, GERALD L. MORGEN, Vice Chair and LEANA D. LAMB, Member. The hearing was held in the Personnel Appeals Board Hearing Room, Olympia, Washington, on May 26, 2000. WALTER T. HUBBARD, Chair, did not participate in the hearing or in the decision in this matter.

1.2 **Appearances.** Appellant Dave Duell was present and was represented by Mark S. Lyon, General Counsel for the Washington Public Employees Association. Respondent Department of Corrections was represented by Art Haro, Human Resource Manager.

1.3 **Nature of Appeal.** This is a rule violation appeal in which Appellant contends that Respondent violated WACs 356-10-030 and 356-10-050(2) and (5) by taking duties and responsibilities he had been performing for over a year, creating a new position, opening the position for competitive hiring and awarding the position to another employee.

1.4 **Citations Discussed.** WAC 356-10-030 and WAC 356-10-050.

## II. FINDINGS OF FACT

2.1 Appellant Dave Duell is a Truck Driver 2 and permanent employee for Respondent Department of Corrections (DOC). Appellant and Respondent are subject to Chapters 41.06 and 41.64 RCW and the rules promulgated thereunder, Titles 356 and 358 WAC. Appellant filed a timely appeal with the Personnel Appeals Board on August 17, 1998.

2.2 In September 1993, Appellant became a permanent Truck Driver 2 for the Division of Correctional Industries at the Washington State Reformatory Dairy Farm. Appellant's primary duty as a Truck Driver 2 was to operate light to medium trucks to transport dairy products to customers of Correctional Industries. Dairy deliveries were made to four general geographic areas identified as East, West, Local, and South Runs. Appellant bid for and received the West Run.

2.3 Between January 1994 and December 1995, Appellant drove a semi-truck. Operating a semi-truck is considered a Truck Driver 3 duty, therefore, Appellant received compensation at a Truck Driver 3 level for the time he performed those duties. Appellant did not request a reallocation of his position.

2.4 By March 1997, dairy deliveries to the West Run had grown and as a result, Respondent again assigned Appellant to drive a semi-truck. Appellant was responsible for tracking the time he spent performing at a Truck Driver 3 level and submitting his time-sheets for compensation. Although Appellant testified that he completed and submitted a classification questionnaire requesting an upward reallocation, no evidence of this request exists.

1 2.5 Respondent performed a six-month cost benefit analysis of the time that Appellant  
2 performed Truck Driver 3 duty deliveries to the West Run for the time period from July 1997 to  
3 December 1997. As a result, Respondent determined that there was ample business generated in  
4 deliveries to the West Run to justify creating a new position at the Truck Driver 3 level.

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6 2.6 In March 1998, Respondent created and approved a Classification Questionnaire to establish  
7 a new Truck Driver 3 position.

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9 2.7 On April 16, 1998, Respondent posted a notice of the newly established Truck Driver 3  
10 position and announced that bids for the position would be accepted until April 22, 1998.

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12 2.8 On June 5, 1998, Respondent posted a job recruitment for the Truck Driver 3 position.  
13 Appellant applied, tested and interviewed for the position. In late July 1998, Respondent notified  
14 Appellant that he did not get the Truck Driver 3 position.

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16 2.9 By undated memo, Sospeter Anunda, Transportation Manager, advised Appellant that  
17 effective August 1, 1998, his work schedule was changed and that he was assigned to drive the  
18 Local Run.

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20 2.10 George Barnes, a Truck Driver 2 who drove the Local Run, was selected and appointed to  
21 the Truck Driver 3 position. Mr. Barnes was assigned to drive the West Run.

### 22 23 **III. ARGUMENTS OF THE PARTIES**

24 3.1 Appellant asserts that his duties driving the semi-truck on the West Run constitute his  
25 "position" as defined under WAC 356-05-300. Appellant argues that Respondent, rather than  
26 reallocate his position as they had an obligation to do, created a vacant Truck Driver 3 position,

1 opened the position for competitive hire and then awarded the position to Mr. Barnes. Appellant  
2 contends he was forced to “swap” truck routes with his coworker, who subsequently performed  
3 Appellant’s duties as a Truck Driver 3. Appellant asserts that he then assumed his coworker’s route  
4 and that the Department stopped paying him assignment pay. Appellant argues that the creation of  
5 the vacant Truck Driver 3 position was done to circumvent the Department’s obligation to  
6 reallocate his position under WAC 356-10-030 and to deny him his right to upward reallocation  
7 without competition per WAC 356-10-050(2) and (5).

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9 3.2 Respondent argues that Appellant was compensated for the time that he performed higher  
10 level duties and that he was not worked out of class. Respondent argues that it has delegated  
11 allocating authority and it properly created a new Truck Driver 3 position. Respondent asserts that  
12 delivery routes are not assigned to specific positions and that management has the discretion to  
13 determine which truck driver positions will service specific routes. Respondent asserts that delivery  
14 routes are not included in the classifications questionnaires because they can change radically based  
15 on business delivery needs. Respondent argues that Appellant has failed to prove that any violation  
16 of the rules occurred and that even if Appellant’s position had been reallocated upward, Appellant  
17 would have been required to compete for the position.

#### 18 19 **IV. CONCLUSIONS OF LAW**

20 4.1 The Personnel Appeals Board has jurisdiction over the parties hereto and the subject matter  
21 herein.

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23 4.2 In an appeal of an alleged rule violation, Appellant has the burden of proof. (WAC 358-30-  
24 170).

25 4.3 Appellant first argues that driving a semi-truck on the West Run constitutes his position. A  
26 position is defined in WAC 356-05-330 as a “group of duties and responsibilities normally assigned

1 to an employee.” The definition of a Truck Driver 3 states that the employee “operates, a majority  
2 of the time, semi-tractor/trailer equipment . . .” The WAC does not specify that the location in  
3 which a group of duties and responsibilities is performed constitutes a position. Furthermore,  
4 location is not an allocating criteria unless it is specifically included in the classification  
5 specification. Additionally, location does not define an individual position unless it is specifically  
6 included in the position’s classification questionnaire. In this case neither the specification nor the  
7 classification questionnaire specify the location in which Appellant performed the duties and  
8 responsibilities of his position. Appellant has failed to prove that the geographic area to which he  
9 made his deliveries formed a part of his position.

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11 4.4 Appellant’s second argument is that Respondent violated WAC 356-10-030, subsection (4),  
12 by failing to undertake any action to reallocate Appellant’s position despite its awareness that he  
13 was performing outside his classification. Appellant further asserts that although subsection (4)  
14 requires the Department to report changes to an employee’s position, the Department failed to take  
15 the necessary action despite the changes in Appellant’s position.

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17 4.5 WAC 356-10-030 indicates, in part, as follows:

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19 (1) Position allocations or reallocations shall be based upon an  
20 investigation of duties and responsibilities assigned and/or performed and other  
21 information and recommendations. . . .

22 (4) It shall be the duty of the appointing authority and/or the personnel  
23 representative to report to the director of personnel any changes in duties,  
24 responsibilities or organization in a position which may affect position allocation.

25 4.6 While allocated to the Truck Driver 2 classification, Appellant performed the duties of a  
26 Truck Driver 3 for approximately 15 months, however, he received compensation for performing

1 those higher-level duties. The Department of Corrections has been delegated allocating authority.  
2 In this case, management used its discretion and authority to establish a new position rather than to  
3 reallocate Appellant's position. Under the unique circumstances presented here, Appellant has  
4 failed to prove that the Department of Corrections violated the provisions of WAC 356-10-030.

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6 4.7 Appellant's third argument is that if management had reallocated his position to the Truck  
7 Driver 3 classification, he would have been entitled to reallocate to the position without  
8 competition.

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10 4.8 WAC 356-10-050, governs the process for employees in position that have been allocated  
11 upward, and states in part:

12 . . . .

13 (2) Employees in positions that have been reallocated upwards based on duties of  
14 a higher level classification performed for over one year shall retain status in the  
15 reallocated position and shall have their salary adjusted in accordance with the  
16 rule governing promotion.

17 . . . .

18 (5) The director of personnel or designee may approve the retention of status  
19 without examination for an incumbent in a reallocated position when it is evident  
20 that the reallocation is, in effect, the correction of a long-term inequity. The  
21 employee's salary is adjusted in accordance with the rule governing promotion.  
22 The application of this subsection shall not be denied in those cases where the  
23 employee has performed duties at a higher class for three continuous years or  
24 more.

25 . . . .

26 4.9 Appellant performed Truck Driver 3 duties for over one year. We agree with Appellant that  
if his position had been reallocated and he had not been compensated for the higher level duties he  
performed from March 1997 to August 1998, he would have been entitled to retain status in the

1 position. However, in this case, Appellant's position was not reallocated. Therefore, the provisions  
2 of WAC 356-10-050 do not apply.

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4 4.10 Appellant has failed to prove that Respondent violated WAC 356-10-020 or 356-10-050(2)  
5 and (5). Therefore, the appeal should be denied.

6  
7 **V. ORDER**

8 NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Dave Duell is denied.

9  
10 DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2000.

11  
12 WASHINGTON STATE PERSONNEL APPEALS BOARD

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15 Gerald L. Morgen, Vice Chair

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18 Leana D. Lamb, Member

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